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RECORDATION NO. \_\_\_\_\_ FILED 1425

MAY 4 1989 -10 50 AM

INTERSTATE COMMERCE COMMISSION

## Emons Marketing Services, Inc.

May 1, 1989

Ms. Mildred Lee  
Interstate Commerce Commission  
12th and Constitution Ave., N.W.  
Room 2303  
Washington, D.C. 20423

No.

Date 5/4/89

Fee \$ 15.00

ICC Washington, D. C.

RE: Lease of Railroad Equipment between Heleasco Twelve,  
Inc. and the Maryland and Pennsylvania Railroad  
Company for up to 110 Boxcars

Dear Ms. Lee:

I have enclosed an original and one copy of the document described below to be recorded pursuant to section 11303 of title 49 of the U.S. Code.

This document is a Lease of Railroad Equipment dated as of March 9, 1989.

The names and addresses of the parties to the document are as follows:

Lessor - HELEASCO TWELVE, INC.  
400 Bellevue Parkway, Suite 340  
Wilmington, DE 19809

Lessee - MARYLAND and PENNSYLVANIA RAILROAD COMPANY  
96 South George St., Suite 520  
York, Pennsylvania 17401

A description of the equipment covered by the document follows:

Up to One Hundred Ten (100) 70-Ton, 50-Foot Boxcars now bearing reporting marks DH (See Exhibit A to Lease of Railroad Equipment for individual listing) but will be restenciled to MPA reporting initials (same numbers).

Also enclosed is a check in the amount of \$13.00 to cover the costs of filing. I understand that the original document will be returned to me with the recordation information noted thereon within about a week.

Please call me should you have any questions. Thank you for your assistance in this matter.

Very truly yours,

Florence M. Yatchisin  
Manager, Leasing Administration  
(717) 771-1722

Enclosures

MAY 4 1989 -10 50 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

AGREEMENT entered into as of the 9th day of March, 1989 by and between HELEASCO TWELVE, INC., a Delaware corporation, whose address is 400 Bellevue Parkway, Suite 340, Wilmington, DE 19809 (hereinafter referred to as "Lessor") and the MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, a Maryland and Pennsylvania corporation whose address is 1 West Market Street, York, Pennsylvania 17401 (hereinafter sometimes referred to as the "M&P").

W I T N E S S E T H:

Pursuant to an Agreement (the "CN Agreement") dated as of March 9, 1989, between Canadian National Railways ("CN") and the M&P, the M&P is providing to CN up to one hundred ten (110) boxcars with identifying marks listed on Exhibit A hereto, as such Exhibit may from time to time be supplemented or amended (the "Cars");

The Lessor owns the Cars and desires to lease the Cars to the M&P on the terms and conditions set forth in this Lease, with the understanding that the Cars will be used in the CN Agreement (the M&P in its capacity as lessee of the Cars hereunder is hereinafter referred to as the "Lessee").

Lessor is entering into a Management and Marketing Agreement with Emons Marketing Services, Inc. ("Manager") pursuant to which Manager may under certain conditions collect the rents provided for in the CN Agreement and required hereunder.

NOW, THEREFORE, in consideration of the premises, intending to be legally bound, the parties hereto agree:

1. Lease and Hire: Lessor hereby lets to Lessee and Lessee hereby leases from Lessor the Cars.

2. Rental Payments: The Lessee hereby covenants and agrees to pay, or cause to be paid to the Lessor and its successors and assigns, as basic rent hereunder, not later than thirty days after receipt by Lessee or Manager, an amount equal to (i) the Gross Revenues (as such term is defined below) received during such month minus (ii) the aggregate cost of any expenses relating to the Cars paid by Lessee pursuant to this Lease or the CN Agreement. For the purpose of this Lease, "Gross Revenues" shall be defined as all revenues of any kind or any other payments (other than indemnification payments) collected or received in connection with the Cars for a given month, less any paid or accrued reclaims, rebates or incentive loads fees with respect to the Cars during such month. Lessee shall use its best

efforts to collect all revenues due under the CN Agreement and this Lease in a timely manner.

Cars in the possession of affiliate lines of the M&P will earn revenue at the prescribed AAR rates in effect at the time.

Any Cars on the lines of the M&P not for repair or maintenance will be forwarded off line as soon as possible.

3. Term of Lease:

(a) The term of this Lease as to each Car shall begin as of the date of commencement of the CN Agreement with respect to such Car and shall terminate on the date of any termination of the CN Agreement with respect to such Car.

(b) It is the intent of the parties that this Lease shall extend to all Cars referred to above, none of which have been delivered to Manager or Lessee at this time. Lessor shall use its best efforts to accomplish the delivery of the Cars to Manager within ninety (90) days of the date hereof and shall be responsible for all costs and expenses associated therewith but Lessor makes no representations or warranty as to the number of Cars ultimately delivered pursuant hereto or to the time of delivery and Lessor shall have no liability to Manager or Lessee or any other person for failure to deliver any Car pursuant hereto.

(c) Upon acceptance hereunder of each of the Cars, Lessee shall issue to Owner its certificate in the form of Exhibit "B" hereto.

4. Maintenance, Taxes and Insurance:

(a) Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred by Lessee in connection with the ownership, use and operation of each Car during its lease term and any extension thereof; including but not limited to repairs, maintenance, insurance and servicing.

(b) Lessor (or the Manager on behalf of Lessor) shall be responsible for the filing and payment of all taxes, assessments and other governmental charges of whatsoever kind or character which may be accrued, levied, assessed or imposed during the lease term and which relate to the ownership of any Car.

5. Identification Marks: The Lessor will permit each Car to be numbered with the names or initials or other insignia required under the CN Agreement or customarily used by CN on railroad equipment.

6. Risk of Loss: In the event that any Car shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a "Casualty Occurrence") during the term of this Lease, Lessee shall promptly notify Lessor with respect thereto. Lessee shall pay to Lessor an amount equal to any amounts either received by or payable by Lessee by way of settlement for destruction of any Car in accordance with AAR interchange rules. Effective as of the date of any Casualty Occurrence, this Lease shall terminate with respect to any Car affected by such Casualty Occurrence. Lessor shall not be required to replace any Car which is the subject of a Casualty Occurrence.

7. Return of Cars: On termination of this Lease, Lessee will return the Cars to the Lessor at the location at which, and in the condition in which, the Cars are returned to Lessee at the termination of the CN Agreement. Lessee shall use its best efforts to enforce the return provisions of the CN Agreement as directed by the Lessor. If, on termination, any Cars are located on the property of Lessee, Lessee shall transport the Cars at Lessee's expense to any connecting railroad as directed by Lessor.

8. Assignment - Use and Possession: Except as expressly provided herein, Lessee will not assign, transfer, encumber or otherwise dispose of its leasehold interest under this Lease, the Cars or any part thereof, or sublet the Cars or place any of the Cars in assigned service without the consent of the Lessor in writing first obtained. Lessee will not permit any encumbrances or liens, based upon any action or liability of Lessee, to be entered or levied upon any of the Cars.

9. Defaults; Remedies: If during the Term of this Agreement one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any amount to be paid hereunder and such default shall continue for a period of ten (10) business days; or

(b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Car; or

(c) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or for any substantial part of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and in any such case either (I) any such proceeding shall remain undismissed or unstayed and in effect for

a period of 60 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding; or

(d) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing;

(e) Any representation contained herein shall have been false or incorrect in a material fashion;

(f) The occurrence of any Event of Default by the M&P under the CN Agreement; or

(g) The occurrence of any Event of Default by Manager under the Management and Marketing Agreement;

then, in any such case, Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made, and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Cars may be located and take possession of all or any such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors, sublessees or assigns, to use the Cars for any purpose whatever.

10. Indemnities: Lessor agrees to indemnify Lessee and hold it harmless from any loss, expense or liability which Lessee may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession, or operation of the Cars while subject to this Lease, excepting only any such loss, expense or liability which arises solely from Lessee's gross negligence or willful misconduct and Lessee shall indemnify Lessor for such loss, expense or liability. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against. Lessee independently agrees that it shall not take any steps that would create any claim, lien,

security interest or encumbrance with respect to any Car and, should any arise solely from the action of Lessee, it shall promptly discharge the same, nor will Lessee, without the prior consent of Lessor, sell, assign, transfer or sublet the Cars except pursuant to the CN Agreement.

11. Assignment of Revenues. (a) Lessee hereby (i) sells, assigns, transfers, pledges, and sets over unto Lessor, all of Lessee's right, title and interest in and to the CN Agreement and in and to revenue to become due and payable from time to time under the CN Agreement, and all other proceeds thereof and (ii) grants to Lessor a security interest in all accounts of the Lessee arising from the use of the Cars in the CN Agreement or under any other agreement, in each such case as collateral security for the payment and performance of all obligations and duties of Lessee to Lessor arising under or by virtue of this Lease.

(b) Upon the occurrence of any Event of Default, by Lessee, unless such Event of Default shall have been waived by Lessor, Lessor may, upon giving written notice to CN of such default, but without consent of Lessee: (i) instruct CN to pay to Lessor any amounts payable by CN to the Lessee pursuant to the CN Agreement; (ii) instruct Lessee to segregate and pay immediately to Lessor any Net Car Hire Revenues (as such term is defined below) received by the Lessee pursuant to the CN Agreement; and (iii) deal with CN with respect to the CN Agreement to the exclusion of any contrary or concurrent instructions from the Lessee.

For purposes hereof, the term "Net Car Hire Revenues" means Car Hire Revenues (as such term is defined in the CN Agreement) minus the aggregate cost of any expenses relating to the Cars paid by the Lessee pursuant to this Lease or the CN Agreement.

12. Amendment of Lease. Lessee will not take any action to amend, modify or cancel the CN Agreement or any other usage agreement for the Cars executed by Manager pursuant to the Management Agreement in any respect or issue any waiver thereunder without the prior written consent of Lessor.

13. Delay or Partial Exercise. No failure or delay on the part of Lessor in exercising any right, power or privilege hereunder shall operate as a waiver thereof or of any other right, power or privilege of Lessor hereunder, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege, provided, however, that Lessee shall not be liable to Lessor for any consequential or incidental damages suffered by Lessor as a result of any such delay on the part of Lessor. The rights and remedies of Lessor hereunder are cumulative and not exclusive of any rights or remedies which it may otherwise have.

14. Elections, Notices.

(a) Lessee shall not make any election under the CN Agreement or give CN notice of substitution of a Car, earlier termination or an event of default without obtaining Lessor's prior written consent thereto. Any notice required hereunder shall be provided in accordance with paragraph 19.

(b) Within ten (10) business days of its receipt of written instruction to do so from Lessor, Lessee shall take appropriate action (i) to exercise any option, make any election, or grant any consent which Lessee, under the CN Agreement, has the power to exercise, make or grant, or (ii) to enforce any rights possessed by Lessee under the CN Agreement.

(c) In the event that any proceeding is instituted by Lessee to enforce its rights under the CN Agreement, such proceedings shall be conducted at Lessor's expense by counsel satisfactory to Lessor and in accordance in all respects with the reasonable instructions of Lessor.

(d) Lessee shall have no obligation or authority to institute or maintain any proceeding to enforce its rights under the CN Agreement without Lessor's prior written consent.

15. Arbitration. Should any arbitration arise under the CN Agreement, Lessee shall promptly advise Lessor thereof and shall follow any reasonable instructions received from Lessor in regard thereto. Lessee agrees it shall undertake no settlement or appoint any arbiter thereunder without Lessor's prior consent. Lessee shall not be liable for any damage or liability sustained or incurred by Lessor relating to Lessor's failure to promptly appoint an arbiter or otherwise comply with or instruct Lessee to so comply with the terms of any arbitration provisions contained in the CN Agreement.

16. Representations and Warranties.

As an inducement to Lessor to enter into this Lease, Lessee represents and warrants as of the date hereof that:

(i) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the States of Pennsylvania and Maryland and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to qualify or be in good standing might materially and adversely affect the ability of the Lessee to perform its obligations under the Lease.

(ii) The Lessee has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Lease and the CN Agreement and to fulfill and comply with the terms, conditions and provisions hereof and thereof; this Lease and the

CN Agreement have been duly authorized, executed and delivered and, assuming in the case of this Agreement due authorization, execution and delivery thereof by Lessor, each constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.

(iii) There are no material actions, suits or proceedings (whether or not purportedly on behalf of the Lessee) pending or (to the knowledge of the Lessee) threatened against or affecting the Lessee or any property or rights of the Lessee at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or other, of the Lessee; and, the Lessee is not, to its knowledge, in default with respect to any order or decree of any court or governmental commission, agency or instrumentality which could materially and adversely affect the condition, financial or other, of the Lessee.

(iv) The Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction materially and adversely affecting the business, present or proposed, of the Lessee, or the operations, property or assets or condition, financial or other, of the Lessee.

(v) Neither the execution and delivery of this Lease or the CN Agreement, nor the consummation of the transactions herein and therein contemplated or the fulfilling of, or compliance with the terms and provisions hereof and thereof, will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation or the by-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee or upon the Cars pursuant to the terms of any such agreement or instrument.

(vi) Neither the execution and delivery by the Lessee of this Lease, nor the consummation of the transactions herein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof, will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator applicable to the Lessee.

(vii) No authorization or approval is required from any governmental or public body or authority having jurisdiction over the Lessee or the Cars in connection with the execution and delivery by the Lessee of this Lease or the CN Agreement, or the fulfillment of or compliance with the terms, conditions and



provisions hereof and thereof or the transactions contemplated thereby.

(viii) The Lessee has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(ix) The Lessee has furnished to the Lessor a consolidated balance sheet of the Lessee's parent corporation and related statements of income and retained earnings; such financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the period covered thereby and on a basis consistent with prior periods; and such statements present fairly the financial condition of the Lessee at such date and the results of its operations for such period. There has not been any material adverse change in the assets, liabilities or financial condition of the Lessee since the date thereof.

(x) The Lessee is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long-term rental obligation under which the Lessee is the lessee for which an applicable grace period has expired and as to which the lender or Lessor has commenced to exercise or given notice of its intent to exercise any remedy.

(xi) Within twenty-one days following the execution and delivery of this Lease and the CN Agreement, such Lease and the CN Agreement will be deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada and confirmation thereof provided to Lessor.

17. Compliance with Laws and Regulations This Lease is subject to all federal, state and other laws, rules, regulations, and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions. Lessor shall comply with all governmental law, regulations and requirements and with the Code of Rules of the Association of American Railroads with respect to the use, maintenance and operation of such Cars subject to this Lease.

18. Prior Understandings. Prior understandings and agreements between the parties with respect to the Cars are merged herein, and all rights of the parties in respect of such Cars shall be governed by this Lease.

19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States Certified mails, first class, postage prepaid, or sent by courier service, addressed to the address set forth with respect to such party in the first paragraph of this Lease or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

20. Assignments by Lessor; Payments to Manager. Lessor shall have the right to assign this Lease, and all its interests herein, to any entity without the prior consent of Lessee. Lessor has appointed Emons Marketing Services, Inc. (the "Manager") as its Manager with respect to the Cars. Payments due Lessor hereunder shall be made to Manager; provided, however, that Lessee shall make payments hereunder directly to Lessor (i) upon Lessee's receipt of written notice from Lessor that (a) an Event of Default by Manager has occurred and is continuing under the Management Agreement between Lessor and Manager or (b) the Management Agreement has for any reason terminated with respect to the Cars; or (ii) automatically, without notice or other action by Lessor, upon Lessee's receipt of notice of any kind of any filing after the date hereof of a petition under any bankruptcy, insolvency or moratorium law by or against Manager.

Manager has acknowledged that it has not and shall not acquire any security interest in the Cars or in the Lease or CN Agreement or in the rents or revenues paid or payable hereunder or under any sublease or otherwise relating to the Cars and that Manager shall collect such amounts solely as a collecting agent.

21. Severability, Effect and Modifications of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

22. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

ATTEST:

BY: C. Michael Kevin  
V.P.

HELEASCO TWELVE, INC.

BY: [Signature]  
TITLE: Attorney in Fact

ATTEST:

BY: Joseph C. Gardill  
Assistant Treasurer

MARYLAND AND PENNSYLVANIA  
RAILROAD COMPANY

BY: [Signature]  
TITLE: Vice President

**EXHIBIT A**

**DESCRIPTION OF CARS**

QUANTITY:	Up to 110
DESCRIPTION:	Plate "C" Boxcars
CURRENT REPORTING MARKS:	DH-26215 - 26249 DH-25700 - 25774
NEW REPORTING MARKS:	MPA

**EXHIBIT B**

**CERTIFICATE OF ACCEPTANCE**

**TO: Heleasco Twelve, Inc. ("Owner")**

I, a duly appointed and authorized representative of the Maryland and Pennsylvania Railroad Company under a Lease Agreement dated as of March 9, 1989 with you as Owner (the "Agreement") do hereby certify that (i) by executing this Certificate I have accepted for all purposes under the Lease the following Items of Equipment and (ii) Canadian National Railway Company has received and accepted delivery of such Items of Equipment under the CN Agreement:

**TYPE OF EQUIPMENT:**

**MANUFACTURER:**

**PLACE ACCEPTED:**

**DATE ACCEPTED:**

**NUMBER OF ITEMS:**

**MARKED AND NUMBERED:**

**Dated: \_\_\_\_\_, 1989**

\_\_\_\_\_  
**Authorized Representative of  
the Lessee**

STATE OF

Delaware

) SS.:

COUNTY OF

New Castle

On the 10<sup>th</sup> day of March, 1989 before me personally appeared James J. Dooling, to me personally known, who being by me duly sworn, says that he is the Attorney-in-Fact of HELEASCO TWELVE, INC., Lessor in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Maureen F. Telling  
Notary Public

my commission expires 8/15/92

COMMONWEALTH OF PENNSYLVANIA )

) SS.:

COUNTY OF

York

On the 10<sup>th</sup> day of March, 1989 before me personally appeared Michael J. Denney, Jr., to me personally known, who being by me duly sworn, says that he is the Vice President of the MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, Lessee in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Annmarie Wileczek  
Notary Public

